

A.G. Contract No.: KR05-0022TRN  
ECS File No.: JPA 04-140  
Project No.: N/A  
Section: Metropolitan Area  
Project: Messages on VMS  
TRACS No.: N/A  
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
VALLEY METRO/REGIONAL PUBLIC TRANSPORTATION AUTHORITY

**THIS AGREEMENT** is entered into this date February 14, 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the VALLEY METRO/REGIONAL PUBLIC TRANSPORTATION AUTHORITY, acting by and through its BOARD OF DIRECTORS (the "VM/RPTA").

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.

2. The VM/RPTA is empowered by Arizona Revised Statutes § 48-5122 and 48-5123 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the VM/RPTA.

3. The VM/RPTA is requesting that the State allow them access to display specific announcements on the Variable Message Sign (VMS) system during Rideshare Week, Carpool Day and during other mutually agreed upon event days starting in November 2004 and continuing every year until December 31, 2007, hereinafter referred to as the "Project", for a total amount not to exceed \$24,900.00 over a four-year period.

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 27375  
Filed with the Secretary of State  
Date Filed: 02/14/05

Janice K. Brewer  
Secretary of State

By: Timothy D. Graesslewald

**II. SCOPE OF WORK**

## 1. The State shall:

a. Upon execution of this Agreement, invoice the VM/RPTA for an estimated amount of \$3,360.00 for the use of the VMS system during November 2004. Thereafter, invoice VM/RPTA for fees incurred by the State for displaying messages on the VMS system submitted and agreed to by the State and VM/RPTA. Fees for the VMS display shall be \$8.00 (Eight dollars) per hour, per VMS sign.

b. Allow the Traffic Operations Center to place messages on VMS's throughout the metropolitan area, encouraging Rideshare Week, Carpool Day and other mutually agreed upon events starting in November 2004 and continuing thereafter for a period of three years ending on December 31, 2007.

c. From the following schedule, invoice VM/RPTA for the use of the VMS system and any unused portions unspent for any calendar year shall be carried forward to the next calendar year.

- January 1 – December 31, 2005 up to \$7,940.00
- January 1 – December 31, 2006 up to \$8,300.00
- January 1 – December 31, 2007 up to \$5,300.00

## 2. The VM/RPTA shall:

a. Upon receipt of an invoice from the State and within thirty-days (30), remit to the State the amount of the subject invoice.

b. Provide funding up to \$24,900.00 on a reimbursable basis under this Agreement over its term.

c. Remit all payments to the attention of Elaine Bunevich, ADOT 206 S. 17<sup>th</sup> Avenue, Mail Drop 176A, Phoenix, Arizona, 85007.

d. Place messages on VMS system throughout the metropolitan area, to call to action driving commuters to the Valley Metro website to seek more information about finding a carpool partner in November 2004, and for other events during a period of three years, 2005, 2006 and 2007, ending on December 31, 2007.

**III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement in association with the Project work requested by the VM/RPTA and provided herein. It is understood and agreed that any damages arising from claims that the content of the messages required hereunder violate a third-party's intellectual property rights, shall be solely the liability of the VM/RPTA and that to the extent permitted by law, the VM/RPTA hereby agrees to save, hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all such claims. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or reasonable attorneys' fees.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

4. The provisions of Arizona Revised Statutes § 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the VM/RPTA will bear all costs associated therewith.

5. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

6. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are not available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue – Mail Drop 616E  
Phoenix, AZ 85007  
(602) 712-7525

Valley Metro/RPTA  
Attn: Executive Director  
302 N. 1<sup>st</sup> Avenue, Suite 700  
Phoenix, AZ 85003  
(602) 262-7433

9. In accordance with Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

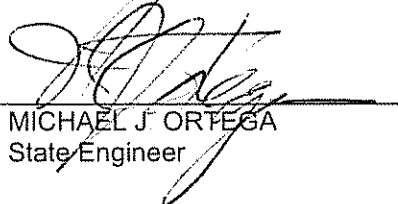
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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

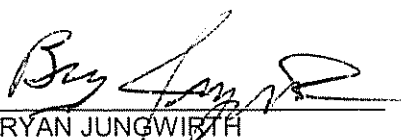
VALLEY METRO/REGIONAL PUBLIC  
TRANSPORTATION AUTHORITY

By   
G. KENNETH DRIGGS  
Executive Director

STATE OF ARIZONA  
Department of Transportation

By   
MICHAEL J. ORTEGA  
State Engineer


ATTEST:

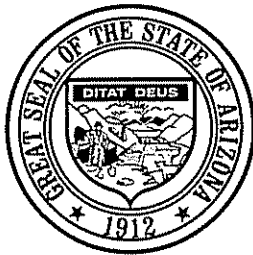
By   
BRYAN JUNGWIRTH  
Deputy Executive Director

APPROVAL OF THE VALLEY METRO/REGIONAL PUBLIC TRANSPORTATION AUTHORITY

I have reviewed the above referenced proposed Intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and THE VALLEY METRO/REGIONAL PUBLIC TRANSPORTATION AUTHORITY and declare this Agreement to be in proper form and within the powers and authority granted to the VM/RPTA under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 15<sup>th</sup> day of July, 2005.

  
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Attorney



**ATTORNEY GENERAL  
CIVIL DIVISION  
TRANSPORTATION SECTION**

**MEMORANDUM**

Jeffrey T. Murray  
Assistant Attorney General

Direct: (602) 542-8859  
Fax: (602) 542-3646


**INTERGOVERNMENTAL AGREEMENT  
DETERMINATION**

A.G. Contract No. KR05-0022TRN (**JPA 04-140**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED February 7<sup>th</sup>, 2005.

TERRY GODDARD  
Attorney General

  
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JEFFREY T. MURRAY for  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:dgr  
Attachment  
889729